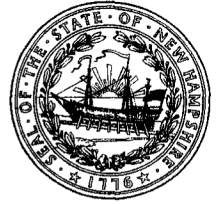




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

March 22, 2005

Robert M. Hammond  
d/b/a R.M. Hammond Excavation  
PO Box 666  
Center Harbor, NH 03226

Re: Docket No. AF 05-020 – Robert M. Hammond d/b/a R.M. Hammond Excavation

Dear Mr. Hammond:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on March 22, 2005. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

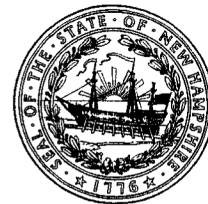
Sincerely,

**COPY**  
Michael P. Scafani,  
Legal Assistant

cc: Harry T. Stewart, P.E., Director, DES Water Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
William E. Evans, DES WD/SSB  
Richard J. de Seve, DES WD/SSB  
DES Public Information Officer  
Edward M. Gordon, Esq.  
Ernest Peter



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Robert M. Hammond  
d/b/a R.M. Hammond Excavation  
PO Box 666  
Center Harbor, NH 03226

Re: CA2003050374, E. Peter, Moultonboro

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 05-020**

### **I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Robert M. Hammond, pursuant to RSA 485-A:43. This Administrative Fine by Consent is effective upon signature by all parties.

### **II. PARTIES**

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Robert M. Hammond is an individual d/b/a R.M. Hammond Excavation having a mailing address of PO Box 666, Center Harbor, NH 03226.

### **III. BACKGROUND**

1. RSA 485-A:29-44 authorizes the Department of Environmental Services to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred thereby, the Commissioner of DES has adopted NH Administrative Rules Env-Ws 1000 to implement this program.
2. RSA 485-A:36, I requires any person engaged in the business of installing individual septic systems to obtain an installer's permit from DES.
3. Robert M. Hammond is a licensed septic system installer, #I-317. Mr. Hammond received his license on February 12, 1980, and has applied for and received a renewal of his license each year since then.
4. RSA 485-A:29, I requires that individual septic systems be installed in strict accordance with plans approved by DES.

5. RSA 485-A:36, I authorizes DES to suspend, revoke, or not renew an installer's permit for failure to install an individual septic system in accordance with approved plans or for failure of an installer to correct defective work.
6. On February 10, 2003, DES issued Construction Approval CA2003050374 to Ernest Peter for property located at 348 Castle Shore Road, Moultonboro, NH. The property is described in Town of Moultonboro Tax Maps as Map 88, Lot 65 ("the Property").
7. Subsequently, Mr. Peter engaged Mr. Hammond to install the approved septic system on the Property.
8. Mr. Hammond installed the system on the Property, and an Operational Approval was issued by DES for the installation on June 4, 2003.
9. The Property is occupied during the summer, but only sporadically during the winter months.
10. During the winter of 2003-2004, Mr. Peter discovered that the system was not functioning properly. He discovered during an inspection of the system that parts of the system had frozen.
11. Subsequent inspection by DES staff revealed a number of shortcomings with the installation of the system. Several of these likely resulted in the freezing of the system, and others threaten the long-term viability of the system
12. While Mr. Hammond has returned to the site on at least one occasion to effect some repairs to the system, most of the identified installation defects remain.
13. The designer of the system, Douglas Gosling, also inspected the system on two occasions. Mr. Gosling's inspections verified the problems identified by the DES inspection.
14. Mr. Hammond refused to return to the Property to correct the defects in the installation of the system, despite numerous letters and telephone conversations with DES personnel concerning these problems.
15. On October 14, 2004, DES issued a Notice of Proposed License Action to Mr. Hammond (NPLA 04-008).
16. On Monday, December 13, 2004, Mr. Hammond and his legal representative, Mr. Ned Gordon, met with DES representatives to discuss a settlement of the license revocation. At that meeting, it was agreed that, if Mr. Hammond could resolve the dispute with Mr. Peter to Mr. Peter's satisfaction, DES would rescind the proposed license action and issue an Administrative Fine by Consent, instead.

#### **IV. ALLEGATIONS**

1. Robert M. Hammond violated RSA 485-A:29, I by failing to install the septic system located on the Property in strict accordance with the approved plan.

2. Robert M. Hammond violated RSA 485-A:36, I by failing to correct deficiencies in the installation of the system.

**V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. For failing to install the septic system located on the Property in strict accordance with the approved plan, Env-C 604.02 (j) specifies a fine of \$1,000 for an individual.
2. For failing to correct deficiencies in the installation of the septic system on the Property, Env-C 604.02(i) specifies a fine of \$1,000 for an individual.
3. Mr. Hammond has paid Mr. Peter a total of \$2,300 in settlement of a civil action between the two as a result of this septic system installation issue.
4. DES agrees to suspend \$1,750 of proposed \$2,000 total fine contingent on no further violations of RSA 485-A:29-44 and the administrative rules promulgated thereunder for a period of two years from the date of the signature of this document by Mr. Hammond and DES.
5. Mr. Hammond agrees to pay the remaining \$250 of the proposed fine upon execution of this Agreement.
6. Payment under paragraph 5 and any payment that becomes due under Paragraph 4 shall be paid by certified check made payable to: Treasurer, State of New Hampshire and mailed to:

DES Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095

7. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
8. By executing this Administrative Fine by Consent, Mr. Hammond waives his right to a hearing on or any appeal of the administrative fines identified in Paragraph 1 and 2, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
9. The effective date of this Administrative Fine by Consent will be the date on which it is signed by Mr. Hammond, the Director of the Water Division, and the Commissioner of DES.
10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of

this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

**COPY**  
  
Robert M. Hammond

8 March 05  
Date

Department of Environmental Services  
**COPY**  
  
Harry T. Stewart, P.E., Director

March 21, 2005  
Date

**COPY**  
  
Michael P. Noll, Commissioner

03 27 05  
Date

cc: Gretchen R. Hamel, Legal Unit Administrator  
Public Information Officer, DES PIP Office  
W. E. Evans, P.E. Administrator, DES/SSB  
R. J. de Seve, Compliance Supervisor, DES/SSB  
E. M. Gordon, Esq.  
E. Peter